

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE
AGENCY, AS CONSERVATOR FOR
THE FEDERAL
NATIONAL MORTGAGE
ASSOCIATION
AND THE FEDERAL HOME LOAN
MORTGAGE CORPORATION,

Plaintiff,

-v-

UBS AMERICAS, INC., *et al.*

Defendants.

Case No. 11 CIV. 5201 (DLC)

**DEFENDANTS' REPORT ON
LOAN FILE PRODUCTION**

Other Cases Brought By This Plaintiff:

11 Civ. 6188 (DLC)
11 Civ. 6189 (DLC)
11 Civ. 6190 (DLC)
11 Civ. 6192 (DLC)
11 Civ. 6193 (DLC)
11 Civ. 6195 (DLC)
11 Civ. 6196 (DLC)
11 Civ. 6198 (DLC)
11 Civ. 6200 (DLC)
11 Civ. 6201 (DLC)
11 Civ. 6202 (DLC)
11 Civ. 6203 (DLC)
11 Civ. 6739 (DLC)
11 Civ. 7010 (DLC)
11 Civ. 7048 (DLC)

(Counsel listed on signature pages)

In response to this Court's October 11, 2012 order ("Order") in the above-captioned actions (the "Actions"), Defendants submit this Report on Loan File Production. Since Defendants' August 29 Coordinated Report on Loan File Production, Defendants have made significant additional progress in both (a) producing the loan files for the securitizations at issue in each case to the extent that those loan files were in the possession of Defendants in the case, and (b) seeking other relevant loan files from nonparties. In accordance with this Court's Order, described below is the status of loan file productions by the parties to the Actions; the status of loan file productions by nonparties; and certain proposals for the fair and efficient completion of loan file collection efforts. Defendants are also filing individual reports with the Court providing additional information regarding their production of loan files for cases in which defendants are named as a party and in those cases "in which the defendant is making a production as a third-party."

I. Status of Party Loan File Productions

Since Defendants began producing loan files to Plaintiff Federal Housing Finance Agency ("FHFA") on June 28, 2012, Defendants have collectively produced 642,258 loan files to FHFA in response to its document requests to Defendants, totaling at least 287 million pages. The status of Defendants' loan file productions are reflected in Exhibit A.

II. Status of Nonparty Loan File Productions

On June 12, Defendants began serving nonparty subpoenas for those loan files not in Defendants' possession and have continued serving such subpoenas as additional entities with custody of loan files have been identified. As reflected in Exhibit B, as of October 15, 2012, Defendants have issued 612 nonparty subpoenas in an attempt

to collect all relevant loan files. Defendants' counsel have actively coordinated with each other, and have been actively involved in discussions with counsel for the servicers, originators and trustees, to help facilitate the quick and efficient production of loan files. Certain third party custodians have informed us that they are gathering documents and are processing them for productions. A chart listing all nonparties to which Defendants have issued subpoenas for loan files, including the date by which third parties have represented that the production of loan files will be made and any steps taken by Defendants to obtain production of those loan files, is enclosed.

III. Proposed Loan File Stipulation

Defendants also wish to correct a statement in FHFA's October 12, 2012 Letter to the Court. In that letter, FHFA asserts that "several Defendants have failed to produce manifests that clearly identify the Securitization to which the loans belong." Prior to FHFA's letter, which came almost four months after Defendants began producing loan files, Defendants had not once received a request that they produce "manifests that clearly identify the Securitization to which the loans belong."

Rather than providing "manifests," the Proposed Loan File Stipulation ("Proposed Stipulation") contemplates the provision of the "Securitization Name" with each loan file, which would provide the "name of the securitization in which the loan was included." But the provision of this information is limited "to the extent that such fields are reasonably accessible and the provision of such fields is not unduly burdensome." The Proposed Stipulation further provides that "no party shall be required to manually tabulate [this] information." FHFA agreed to this language and the parties have relied on

that agreement when preparing to produce loan files.¹ If FHFA has concerns about the format of a particular Defendant's loan file productions, FHFA should address that issue with the Defendant directly, rather than raising it for the first time in a letter to the Court.

Attached for the Court's reference as Exhibit C is a redline of the draft of the loan file stipulation under which the parties had been proceeding in good faith against the draft version FHFA submitted with its October 9 letter to the Court properly. The draft under which parties had been proceeding provided for loan file production that takes account of how files may be kept in the ordinary course of business and the parties' shared interest in and responsibility for consistent production formats.

IV. Prioritization of Certain Loan Files

In response to letters FHFA addressed to the Court last week seeking orders about placing priority on certain loan file productions, or limiting non-parties' obligations to search for other documents, Defendants have now met and conferred with FHFA, have presented several proposals to achieve FHFA's aims through joint (or jointly drafted) communications to non-parties, and otherwise have sought to narrow the issues in dispute. As of this writing, those efforts were ongoing. Defendants will be pleased to provide details and updates at the conference with the Court today at 2:30 pm.

¹ Defendants note that with its October 9, 2012 Letter to the Court, FHFA annexed as Exhibit 4 a draft version of this agreement that includes but in no way differentiates certain new terms FHFA asks the Court to order or enforce, from the many terms to which the parties had agreed. To avoid confusion, Defendants submit the last version of the agreement that Defendants sent to FHFA with redlining to show where agreement had not yet been reached.

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